

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Miroslaw Z. BOBER

Application No.: 09/786,352

Confirmation No.: 8286

Filed: March 13, 2001

Art Unit: 2624

For: METHOD, APPARATUS, COMPUTER
PROGRAM, COMPUTER SYSTEM AND
COMPUTER-READABLE STORAGE FOR
REPRESENTING AND SEARCHING FOR AN
OBJECT IN AN IMAGE

Examiner: G.M. DESIRE

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37
CFR § 1.705 (d)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Madam:

Pursuant to CFR § 1.705 (d), the Patentee hereby requests reconsideration of the patent term adjustment indicated on the Notice of Allowance for Application No. 09/786,352 (Exhibit 1). Specifically, while the Notice of Allowance indicates a patent term adjustment of 315 days, Patentee submits that the patent term adjustment should correctly be 1292 days.

STATEMENT OF FACTS

1. The Notice of Allowance issued in this case on April 17, 2009 indicated that the Patent Term Adjustment to date was 315 days, (see page 3 of Exhibit 1).
2. The U. S. Patent and Trademark Office's Patent Term Adjustment History, as indicated in the Patent Application Information Retrieval (PAIR) system indicates a Patent Term Adjustment due to prosecution delays of 315 days, based upon 811 days of USPTO delays minus 496 days of Applicant delay (see Exhibit 2).

3. However, the U.S. Patent and Trademark Office has incorrectly applied credit days for failure to respond to the Notice of Appeal filed on May 19, 2008. The U.S. Patent and Trademark Office is not actually required to respond to a Notice of Appeal until an Appeal Brief has been filed. Because the rejection on appeal was successfully withdrawn and a new Office Action was issued, the applicant is actually due credit days for a successful appeal.
4. Further, the PAIR system does not indicate any Patent Term Adjustment due to the USPTO failure to issue a patent within three (3) years (36 months) from the actual filing date of the application, July 12, 2000 (37 C.F.R. § 1.702(b)), which delay was 1012 days.
5. In accordance with the recent District Court decision in *Wyeth et al. v. Dudas*, 88 USPQ2d 1538 (D.D.C. 2008), the correct Patent Term Adjustment should be 1272 days of prosecution delay, plus 1012 days for failure of the USPTO to issue a patent within three (3) years of the actual filing date of the application, minus 496 days for the applicants' delays, for a total of 1292 days of Patent Term Adjustment.
6. Accordingly, Patentee hereby requests that the U. S. Patent and Trademark Office correct the calculation of the Patent Term Adjustment for the above-identified patent to 1292 days of Patent Term Adjustment.

**COMPLIANCE WITH REQUIREMENTS OF
37 CFR § 1.705 (b)(1) AND (2)**

7. A statement of facts is presented above, detailing the relevant dates and the correct patent term adjustment.
8. The present patent is not subject to any Terminal Disclaimer or any expiration date specified in a Terminal Disclaimer (§ 1.705(b)(2)(iii)).
9. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the above-identified application (§ 1.705(iv)(B)).

CONCLUSION

The USPTO is requested to correctly indicate that U.S. Application No. 09/786,352 is entitled to 1292 days of Patent Term Adjustment.

PAYMENT OF FEES

As set forth in the attached Fee Transmittal, the Commissioner is hereby authorized to charge the amount of \$200.00 to Deposit Account No. 02-2448 for the consideration of this Request as required by 37 C.F.R. § 1.18(e).

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required.

Dated: July 17, 2009

Respectfully submitted,

By Penny Caudle # 46,607
Michael K. Mutter
Registration No.: 29,680
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant

Attachment(s):
Exhibit 1 – Notice of Allowance
Exhibit 2 – Patent Term Adjustment History From PAIR